IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1) L.P.A. No. 893 of 1988

Smt.Jaswant Kaur.

..... Appellant.

Versus

The Extra Assistant Colonisation Officer, Punjab,Chandigarh and others.

..... Respondents.

(2) L.P.A. No. 894 of 1988

Shri Madan Mohan Rai Dhanda (since deceased) through L.Rs. and others.

..... Appellants.

Versus

The Extra Assistant Colonisation Officer, Punjab,Chandigarh and others.

..... Respondents.

(3) L.P.A. No. 895 of 1988

Madan Mohan Rai Dhanda (since deceased) through L.Rs. and others.

..... Appellants.

Versus

Extra Assistant Colonisation Officer, Punjab,Chandigarh and others.

..... Respondents.

(4) L.P.A. No. 899 of 1988

The Extra Assistant Colonisation Officer, Punjab,Chandigarh and others.

..... Appellants.

Versus

Smt.Jaswant Kaur.

..... Respondents.

(5) L.P.A. No. 900 of 1988

The Extra Assistant Colonization Officer, Punjab,Chandigarh and others.

..... Appellants.

Versus

Madan Mohan Rai Dhanda (since deceased) through L.Rs. and others.

..... Respondents.

(6) L.P.A. No. 901 of 1988

Punjab State through the Land Acquisition Collector, Chandigarh.

..... Appellant.

Versus

Mastan Singh and another.

..... Respondents.

(7) L.P.A. No. 902 of 1988

The Extra Assistant Colonisation Officer, Punjab,Chandigarh and others.

..... Appellants.

Versus

Smt. Jaswant Kaur.

..... Respondent.

(8) L.P.A. No. 903 of 1988

Punjab State through the Land Acquisition Collector, Chandigarh.

..... Appellant.

Versus

Tejinder Singh and others.

..... Respondents.

(9) L.P.A. No. 904 of 1988

The Extra Assistant Colonisation Officer, Punjab,Chandigarh and others.

..... Appellants.

Versus

M/S Navyug Land Development Corporation (Regd.),Salem Tabri, Ludhiana.

..... Respondent.

(10) L.P.A. No. 905 of 1988

The Extra Assistant Colonisation Officer, Punjab,Chandigarh and others.

..... Appellants.

Versus

Shri Madan Mohan Rai Dhanda (since deceased) through L.Rs. and others.

..... Respondents.

(11) L.P.A. No. 906 of 1988

The State of Punjab through the Land Acquisition Collector, Chandigarh.

..... Appellant.

Versus

Mastan Singh and another.

..... Respondents.

(12) L.P.A. No. 907 of 1988

The Collector, Land Acquisition Colonisation Department, Punjab, Chandigarh and others.

..... Appellants.

Versus

Harjeet Singh and Bhinder Singh (since deceased) through L.Rs.

..... Respondents.

(13) L.P.A. No. 908 of 1988

The Collector, Land Acquisition Colonisation Department, Punjab, Chandigarh and others.

..... Appellants.

Versus

Harjeet Singh and Bhinder Singh (since deceased) through L.Rs.

..... Respondents.

(14) L.P.A. No. 909 of 1988 & Cross Objection No.5- LPA of 2005

The Extra Assistant Colonisation Officer,Punjab, Chandigarh and others.

..... Appellants.

Versus

Madan Mohan Rai Dhanda (since deceased) through L.Rs. And others.

..... Respondents.

(15) L.P.A. No. 910 of 1988

The Collector, Land Acquisition Department, Punjab, Chandigarh and others.

..... Appellants.

Versus

S.Amrik Singh and others.

..... Respondents.

(16) L.P.A. No. 911 of 1988

Extra Assistant Colonisation Officer, Punjab,Chandigarh and others.

..... Appellants.

Versus

Madan Mohan Rai Dhanda (since deceased) through L.Rs. and others.

..... Respondents.

(17) L.P.A. No. 912 of 1988 & Cross-Objection No.4-LPA of 2005

The Extra Asstt.Colonisation Officer, Punjab,Chandigarh and others.

..... Appellants.

Versus

Madan Mohan Rai Dhanda (since deceased) through L.Rs. and others.

..... Respondents.

(18) L.P.A. No. 913 of 1988

The Collector, Land Acquisition Department, Punjab, Chandigarh and others.

..... Appellants.

Versus

Amrik Singh and others.

..... Respondents.

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(19) L.P.A. No. 914 of 1988

The Extra Asstt. Colonisation Officer, Punjab,Chandigarh and others.

..... Appellants.

Versus

Madan Mohan Rai Dhanda (since deceased) through L.Rs. and others.

..... Respondents.

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Date of Decision : 11.12.2007

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CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

....

Present: Shri Kanwaljit Singh, Senior Advocate with Shri Harmanjet Singh, Advocate for the appellant in L.P.A. No. 893 of 1988 and for the respondent in L.P.A. Nos. 899 and 902 of 1988.

Shri M.L.Sharma, Advocate for the appellants in L.P.A.Nos.894, 895 of 1988 and for the respondents in L.P.A.Nos. 900, 905, 909, 911, 912 and 914 of 1988 and for Objectors in Cross-Objection Nos. 4-LPA and 5-LPA of 2005.

Shri A.G.Masih, Senior Deputy Advocate General, Punjab for the respondents in L.P.A.Nos.893, 894 and 895 of 1988 and for the appellants in L.P.A.Nos.899, 900, 901,902, 903, 904, 905,906, 907,908, 909, 910, 911,912,913 and 914 of 1988.

None for the respondents in L.P.A.Nos.901,903, 904, 906, 907, 908, 910 and 913 of 1988.

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

By this judgment, we are deciding the above-mentioned Letters Patent Appeals and the Cross-Objections as the same have been preferred against common order dated 4.2.1988 of the learned Single Judge whereby he disposed of sixteen Regular First Appeals filed by the land-owners/claimants and the State of Punjab.

Pursuant to notification dated 9.11.1979 issued under Section 4 of the Land Acquisition Act,1894 (for short, `the Act'), the land in question situated within the revenue estate of Village Kara Bara was acquired for the purpose of establishing a New Vegetable Market at Ludhiana. The Land Acquisition Collector (for short, `the Collector'), determined the compensation by categorizing the acquired land into two blocks as follows:-

(i) Land abutting the bye-pass road upto a depth of 20 Karams at Rs.50,000/- per acre.

(ii) The rest of the land at Rs.40,000/- per acre.

The land-owners, feeling dis-satisfied with the award of the Collector, sought references under Section 18 of the Act. The District Judge, Ludhiana (hereinafter referred to as `the Court of Reference'), while maintaining the categorization of the acquired land, assessed the compensation for the first category at Rs.1,29,000/- per acre and for the

second category at Rs.96800/- per acre.

The Regular First Appeals followed wherein the learned Single Judge upheld the award of the Court of Reference and did not grant any enhancement. Hence, these appeals by the land-owners as well as by the State of Punjab.

Learned counsel for the land-owners/claimants-appellants contended that since the learned Single Judge did not enhance the compensation, it is imperative for this Bench to look into the award of the Court of Reference as well because the primary error crept in at that point of time. They argued that the Court of Reference had relied upon judgment, Exhibit A-15, which pertained to acquisition of land in village Partap Singh Wala, which is at a distance of about 6 Kms. From the acquired land and, therefore, it could not have been taken into consideration. They further argued that the acquired land is contiguous to another set of land which was acquired in village Kara Bara. Besides, learned counsel for the land-owners urged that the belting system was bad and that uniform rate ought to have been awarded.

Learned counsel for the land-owners/claimants-appellants then made a reference to a judgment delivered by this Court in L.P.A.No.455 of 1978 decided on 3.5.1988, which was upheld by the Apex Court, by which an amount of Rs.20/- per square yard was awarded as compensation for the acquisition of land in the same village vide notification dated 28.9.1971 for setting up Grain Market at Ludhiana. They contended that this Bench should take a judicial notice of the same and grant compensation by

allowing an increase of 10% per year for the intervening period i.e. 1971 to 1979 when the present acquisition was made.

Lastly, learned counsel for the land-owners/claimants-appellants contended that even if an average of the instances of sale placed on the record is taken, even then, the market price comes, at least, to Rs.2,45,000/- per acre, which ought to have been actually awarded.

To support their contentions, learned counsel for the land-owners/ claimants- appellants placed reliance on Administrator Genl. of West Bengal Versus Collector, Varanasi, AIR 1988 S.C. 943= 1988(1) R.R.R. (S.C.) 480; Union of India & Anr. Versus Raghubir singh (dead) by Lrs. Etc., (1989) 3 S.C.R. 319; M/S Printers House Pvt. Ltd.Versus Mst.Saiyadan (Deceased) by Lrs. and others, AIR 1994 S.C. 1160; Special Land Acquisition Officer, Kheda and anr. Versus Vasudev Chandrashankar and Anr., 1998(1) L.A.C.C. 234 (S.C.); Special Land Acquisition Officer, BYDA, Bagalkot Versus Mohd. Hanif Sahib, AIR 2002 S.C. 1558; Bhim Singh and others Versus State of Haryana and another, (2003) S.C.C. 529; Hans Raj Sharma (dead) by Lrs. Versus Collector, Land Acquisition, Tehsil & District Doda, (2005) 1 S.C.C. 553; Rishi Pal Singh and others Versus Meerut Development Authority and another, (2006) 3 S.C.C. 205; Hukam Chand & Rs. Versus Haryana State, 1989 L.A.C. (P&H) 357; Kesra Singh and ors. Versus State of Punjab, 1989(1) R.R.R. 375 (P&H); Karnail Singh Versus State of Punjab and another, 1990(1) P.L.R. 672; Sudhir Kumar Versus State of Punjab and another; 1993(2) P.L.R. 603 and Vijay Singh Versus Union of India, 2004(2) L.A.C.C. 621 (Delhi).

On the other hand, learned State counsel contended that the market price of the acquired land was far less than what has been awarded by the Court of Reference and, therefore, the same deserves to be reduced on the basis of the evidence adduced before it.

We have heard the learned counsel for the parties at length and have perused the record.

Their Lordships of the Supreme Court in Chimanlal Hargovinddas Versus Special Land Acquisition Officer, Poona and another, AIR 1988 S.C. 1652 laid down certain para-meters which are to be taken into consideration for determining the market value of the land under acquisition. The same are reproduced below:-

> "While determining the market value of land, the following factors have to be borne in mind:-
>
> (1) Determined as on the crucial date of publication of the notification under S.4 of the Land Acquisition Act (dates of Notifications under Ss. 6 and 9 are irrelevant).
>
> (2) The determination has to be made standing on the date line of valuation (date of publication of notification under S.4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.
>
> (3) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable

instance which provides the index of market value.

(4) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of Land).

(5) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(6) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(7) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition maybe deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(8) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors evaluated in terms of price variation as a prudent purchaser would do.

(9) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the

instance taken as norm for plus factors and unloading it for minus factors.

The exercise indicated in clauses (1) to (10) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:-

Plus factors.

1. Smallness of size.

2. proximity to a road.

3. frontage on a road.

4. nearness to developed area.

5. regular shape.

6. level vis-a-vis land under acquisition.

7. special value for an owner of an adjoining property to whom it may have some very special advantage.

The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq.yds. cannot be compared with a large tract or block of land of say 10000 sq.yds. or more. Firstly, while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller

plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

These are general guidelines to be applied with understanding informed with common sense."

In Special Deputy Collector and another etc. Versus Kurra Sambasiva Rao and others, AIR 1997 S.C. 2625, the Apex Court observed as under:-

"What is fair and reasonable and adequate market value is always a question of fact depending on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing purchaser in normal human conduct would

be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification under Section 4(1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions."

In accordance with the law laid down by the Supreme Court, in Administrator Genl. of West Bengal Versus Collector, Varanasi, (supra), the foremost question that is to be determined is the potentiality of the land. The relevant observations made by their Lordships are extracted below:-

"The determination of market value of a land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market value of a piece of property, for purposes of S.23 is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market value is the prediction of an economic event, viz., the price-outcome of a hypothetical sale,

expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market-value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available."

The following observations of their Lordships made in Special Deputy Collector and another etc. Versus Kurra Sambasiva Rao and others (supra) are also necessary to be quoted:-

"It is well settled legal position that the claimants stand in the position of plaintiffs. Burden of proof is always on the claimants to prove by adduction of cogent and acceptable evidence that the lands are capable of fetching higher compensation than what is determined by the Land Acquisition Officer, which is only an offer."

It is crystal clear from the law laid down in the aforementioned judgments that the determination of the potentialities of an acquired land is an intricate exercise and that the onus to prove the market value thereof is always that of the claimants.

Now, venturing to determine the potentialities of the acquired land in these cases, it is pertinent to notice the statement of RW1-Dalip Singh, Patwari, Colonisation Department, Punjab. The relevant extract of his statement as made in the cross-examination reads as under:-

"This land pertains to the land of village Kara Bara only.

Location of G.T.Road has not been depicted in this plan. The GT Road runs at a distance of 11 killas from the nearest end of the acquired land. It is correct that the Agro-Industries fall at the junction of the Bye Pass and the GT Road.The land under the Agro Industries was earlier acquired. There is no cold storage along the Bye Pass uptill Bahadurke Road excepting Kartar Cold Storage and another cold storage in the New Grain Market. The Kartar Cold Storage touches the GT Road. I do not know Gurbachan Cold Storage and Kissan Cold Storage, fall across the road to the acquired land. I do not know the location of Kitty Bread Factory and thus cannot say if it falls across the road to the acquired land. I do not know if the New Grain Market was notified by the Marketing Board about 12 years back. It is correct that the land under the passages existing in the acquired land had also been acquired. The marginal notes on this plan are correct and with my hand. I am not aware of the date of agreement to sell the land subject matter of mutations Ex.R2 and Ex.R3.The colonies of Azad Nagar, Gobindpuri and New Azad Nagar may have been laid out prior to the acquisition of this land but there was no development. The acquired land falls within the municipal corporation limits of Ludhiana."

A reading of the statement of RW1 reproduced above leaves no ambiguity regarding the fact that the acquired land was within the limits of

Municipal Corporation, Ludhiana and was surrounded by Cold Storages and is near to the New Grain Market, besides having some industries and residential localities in the area which have been laid down in its vicinity. Therefore, there is little hesitation to hold that the acquired land had immense potentialities for urban use as being situated within the limits of Municipal Corporation, Ludhiana.

Once the aforesaid question is concluded, then the next question that arises for determination is as to what should have been the market value of the acquired land and what is the evidence on record which can be taken into consideration to assess the same.

There are on record instances of sale in the shape of Exhibits-A3 to A13, but all of them pertain to the periods ranging from 1974 to 1978 and relate to small chunks of land and, therefore, the value depicted against their sale price cannot be accepted straight-away. This view of ours is fortified by the following observations of their Lordships made in Administrator Genl. of West Bengal Versus Collector, Varanasi (supra):-

> "It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land with potentialities for urban use has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if

it is shown that the large extent to be valued does admit of and is ripe for use for building purposes, that building lots that could be laid-out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid-out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made. Deductions for land required for roads and other development expenses can, together, come up to as much as 53%. Accordingly, the prices fetched for small plots cannot directly be applied in the cases of large areas, for the reason that the former reflects the `retail' price of land and the latter the `wholesale' price."

When we examine the reasoning that has gone into while determining the compensation by the Court of Reference, which becomes imperative in view of the fact that the learned Single Judge has upheld its award, we find that the instances of sale Exhibits A-10 to A-13 have rightly been rejected as they do not show the location of the lands involved therein

vis-a-vis the acquired land.

In so far as sale instances, Exhibits A-3 to A-8, are concerned, they pertain to village Kara Bara in whose revenue jurisdiction the acquired land was situated and reveal that the value of the land in the years 1974 and 1975 was about Rs.90,000/- per acre.

Exhibit A-9 is the sale deed dated 27.4.1974 and it pertains to a very small portion of the land, i.e. 605 square yards, which was sold at the rate of Rs.89455/- per acre.

The above mentioned sale instances conclusively establish that the rate of the land in the years 1974 and 1975 was approximately Rs.90,000/- per acre. However, there is no sale instance on the record between the years 1975 to 1979, i.e., the year of acquisition.

The Court of Reference relied upon judgment (Annexure A-15), which relates to the acquisition of land of village Partap Singh Wala on 18.8.1979, wherein the compensation was awarded at the rate of Rs.20/- per square yard, i.e., Rs.96800/- per acre and this amount has been taken into consideration by it for awarding compensation at the rate of Rs.96800/- per acre, for the acquired land pertaining to second category.

However, there was nothing on record to show the proximity of the acquired land in these cases with land involved in Annexure P1. Even no evidence could be shown to this Court as well to demonstrate the aforesaid fact.

The belting system was adopted by the Court of Reference and was affirmed by the learned Single Judge to say that the acquired land

which was situated up to the depth of 20 Karams from the road stood at a better footing and after awarding an increase at the rate of 1/3rd, the compensation was worked out at Rs.1,29,000/- per acre.

The system of belting has, indeed, been approved by the Apex Court. In Municipal Committee, Bhatinda and others Versus Balwant Singh and others, (1995) 5 S.C.C. 433, it was observed as under:-

> "In an appropriate case, where evidence on record is available the court would be justified in fixing the belting and to determine the market value of the land on that basis."

In the facts and circumstances of the present cases, we agree with the conclusion of the Court of Reference in this regard and approve the belting system.

Now, reverting back to the evidence on record, all the instances of sale, even though of small pieces of land, are in the immediate vicinity of the acquired land and pertain to the years 1974 and 1975. In our opinion, the Court of Reference had rightly concluded that the price of the land in village Kara Bara in the years 1974 and 1975 was approximately Rs.90,000/- per acre. However, it imported into its reasoning the judgment, Annexure P15, relating to village Partap Singh Wala and determined compensation for the second category land at the rate of Rs.96800/- per acre and by giving 1/3rd increase, awarded compensation for the land falling in the first category, i.e., at the rate of of Rs.1,29,000/- per acre. As noticed above, there is nothing on record to show the proximity of the land involved in judgment Annexure A15 and the acquired land. It was, thus, against the

settled principles of assessing the compensation and merely because some amount had been awarded in a nearby village cannot form the basis of determination of the compensation in the present acquisition. We are fortified in this view by the following observations of their Lordships of the Apex Court in Jai Prakash and others Versus Union of India, AIR 1997 S.C. 2237:-

> "We are of the view that the order under appeal passed by the High Court does not call for interference. Merely because higher compensation was given for lands situated in a neighbouring village does not entitle the appellants to get the same compensation. The High Court has taken into consideration all the relevant facts like the size of the plot, location, potential value of the land and also a few relevant sale deeds. No error of law has been shown to have been committed by the High Court."

We, therefore, feel that the value of the land @ Rs.90,000/- per acre in the years 1974 and 1975 was rightly concluded in vilage Kara Bara where the acquired land situated and 10% increase per annum should have been applied to valuate the market price of the acquired land in the year 1979.

Thus, the market value of the acquired land falling in the second category comes to Rs.1,26,000/- per acre and by giving an increase of 1/3rd, which method had rightly been adopted by the Court of Reference, the market price of the acquired land falling in the first category, works out

at Rs.1,68,000/- per acre.

Since the aforesaid value has been determined on the basis of the sale transactions which relate to small pieces of lands, therefore, some discount by way of deduction has to be made as the acquired land was a large chunk. To our mind, 20% cut to the aforesaid valuation would be just and appropriate in the given circumstances of the instant cases.

On the basis of the above, the market value of the acquired land of the first category is assessed at Rs.1,34,400/- per acre, whereas it is assessed at Rs.1,00,800/- per acre for the acquired land of second category.

Resultantly, the land-owners are held entitled to receive the compensation for their acquired land on the above rates. Besides, they will also be entitled to receive statutory benefits as per the amended provisions of the Act on the enhanced amount of compensation.

The appeals and cross-objections of the land-owners are, accordingly, accepted to the above extent, whereas the appeals of the State and its functionaries are dismissed.

(Vijender Jain)
Chief Justice

December 11,2007
"SCM"

(Mahesh Grover)
Judge